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May 25, 2000

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Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, DC 20554

Re: Petition for Reconsideration on behalf of **IDAHO
BROADCASTING CONSORTIUM, INC.**, respecting an MM
Docket No. 99-134

CLIENT NO. 43209-84672

Dear Ms. Salas:

Transmitted herewith, on behalf of **IDAHO BROADCASTING CONSORTIUM, INC.**, is an original and four copies of its **PETITION FOR RECONSIDERATION** in connection with the above-referenced proceeding involving the amendment of the FM Table of Allotments [Section 73.202(b) of the Commission's Rules] respecting Drummond and Victor, Montana.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,



Laura A. Otis

Enclosures (5)

cc(w/ 1 enc.): As per the Certificate of Service
Mr. Frederic W. Constant
Mr. Melvyn Lieberman

LWS/dml

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-134
Table of Allotments,)	RM-9543
FM Broadcast Stations)	RM-9572
(Drummond and Victor, Montana))	

TO: Chief, Allocations Branch
 Mass Media Bureau

RECEIVED
 MAY 25 2000
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

IDAHO BROADCASTING CONSORTIUM ("IBC"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, respectfully requests reconsideration of the *Report and Order* ("Order") DA 00-917, issued on April 25, 2000 in the above-referenced proceeding. In support whereof, the following is shown:

1. The Policy and Rules Division ("Division") of the Commission's Mass Media Bureau erroneously dismisses IBC's timely-filed comments supporting the allotment of Channel 268C at Drummond, Montana, and proposing the allotment of Channel 294C1 at Victor, Montana, and the allotment of 285C3 at Alberton, Montana. As demonstrated below, the dismissal of IBC's submission was arbitrary and capricious, premised on grounds which have no merit. As such, the *Order* should be rescinded and reissued to provide for the allotment of Channel 294 to Victor, Montana.

2. The Division plainly does not understand the fundamental aspects of IBC's proposal. In footnote 1 of its *Order*, the Division incorrectly states that IBC "is requesting the substitution of Channel 294C1 for Channel 294C2 at McCall, Idaho, and, reallocation of Channel 294C1 to

Victor, Montana.” The Division is plainly wrong. IBC has never proposed this channel substitution. In its submission, IBC very clearly proposed the reassignment of Channel 294 *from* McCall, Idaho, *to* Victor, Montana. The Division’s misunderstanding of these relevant facts warrants reconsideration of the *Order*.

3. The Division also errs in treating IBC as a mere applicant in this proceeding. As the Commission’s own records show, IBC obtained a construction permit for Channel 294C2 at McCall, Idaho on December 8, 1999, more than four months *before* the adoption and release of the *Order*. The Division, however, is apparently unaware of this fact, dismissing IBC’s proposal on the ground that IBC “is a first-come/first-serve applicant for Channel 294C at McCall, Idaho (BPH-971023MD) and Section 1.420(I) applies to licensees and permittees but not to applicants.” This error alone compels rescission of the *Order*.

4. Moreover, the *Order* appears to be based on a flawed engineering analysis. In the *Order*, the Division claims that “a staff engineering analysis indicates that Channel 294C1 at Victor, Montana is short spaced to KMSM-FM, Butte, Montana on Channel 295A.” The Division also claims that “the analysis shows that Channel 294C1 at Victor is short spaced to the vacant allotment site for Channel 294C2 at McCall, Idaho, as well as to Idaho’s application for Channel 294C2 at McCall.” These assertions are simply incorrect and premised on a misunderstanding of IBC’s proposal. As demonstrated in the attached engineering statement, there is sufficient spacing between IBC’s proposed site at Victor and KMSM-FM at Butte. Specifically, there is a distance of 1.8 kilometers *in excess* of the minimum requirement of 133 kilometers, as prescribed in Section 73.207 of the Commission’s Rules. Further, there is no short spacing problem with regard to the Victor and McCall stations operating on Channel

294 because, as previously noted, IBC's proposal called for the reassignment of Channel 294C1 from McCall to Victor.


5. The Commission is not free to ignore these overlapping errors. As the Commission is aware, it is required as a federal agency to "examine the relevant data and articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Consistent with this mandate, the Commission should rescind the *Order* and clarify those facts which have been distorted in this proceeding.

6. The mere fact that IBC labeled its comments a "counterproposal" (when mutual exclusivity did not exist) does not justify dismissal. To ensure that its proposal would be evaluated in conjunction with the proposal set forth in the *Notice for Proposed Rulemaking*, DA 99-801 ("*NPRM*"), IBC filed its comments on June 21, 1999, within the time period specified in the *NPRM*. Dismissing IBC's proposal on the ground of an inadvertent labeling error would exalt form over substance, and serve no useful purpose. IBC's proposal simply cannot be fairly evaluated outside of the context of this proceeding. Once the allotments in this proceeding become final, IBC will have little or no ability to effectively advance its proposal. If the Commission is to make allocation decisions in furtherance of the public interest, and consistent with its obligation to promote a "fair, efficient, and equitable distribution of radio service," as required under Section 307(b) of the Communications Act, it must consider IBC's meritorious proposal.

WHEREFORE, in light of the foregoing, the Commission should grant reconsideration of, and rescind and reissue the *Order*.

Respectfully submitted,

IDAHO BROADCASTING CONSORTIUM

By: 
Lee W. Shubert
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Its Attorneys

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Dated: May 25, 2000

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E N G I N E E R I N G S T A T E M E N T

In a Report and Order adopted April 12, 2000¹, the Allocations Branch of the Policy and Rules Division of the FCC noted in footnote 1 that the proposed channel 294C1 at Victor, MT will be short spaced to KMSM-FM, Butte, MT.

An analysis of the separation between the two locations indicate that there is in fact 1.8 kilometers in excess of the minimim requirement of 133 km as specified in 47 C.F.R. Section §73.207.

According to the FCC data base, KMSM is at N 46° 00' 44" W 112° 33' 26". The site proposed by Idaho Broadcasting Consortium for Victor on channel 294C1 is N 46° 10' 07" W 114° 17' 06".

Using the allocation study program utilized by this firm for the past 10 years, the distance between the two sites is 134.8 km.

Employing another computer program that uses the methodology found in 47 C.F.R. Section §73.208, the distance between the two sites is 134.75 km.

The minimum distance under 47 C.F.R. Section §73.207 between a Class A assignment and a Class C1 assignment is 133.0 km.

This statement is made under penalty of perjury.

May 24, 2000
Date

Melvyn Lieberman
Melvyn Lieberman

¹ 1. FCC Docket No. 99-134, RM-9543 and RM-9572


CERTIFICATE OF SERVICE

The undersigned, an attorney of Rosenman & Colin LLP, hereby certifies that the foregoing document was served by First Class United States mail, postage prepaid, or was hand-delivered, to the following:

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May 25, 2000